The Cochin debt Conciliation Bill.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*.—Mr. President, Sir, I beg to present the Select Committee Report on the Cochin Debt Conciliation Bill and move that the Bill be taken up for consideration.

The Cochin Debt Conciliation Bill, the urgency of which has been before this House, in various shapes and on various occasions and to which pointed reference was made by the Hon'ble President this morning and the way in which the mind of the Government works as far as that Bill is concerned, I, without making any speech, move that the Bill be taken up for consideration.

Mr. T. K. Nayar *(Pazhayannur)*.—I second it.

Motion was put and carried.

Deputy President.—The question is that Clause 2 stand part of the Bill.

2. In this Regulation, unless there is anything repugnant in the subject or context—

(a) 'landlord' means a person immediately under whom a tenant holds ;

(b) 'tenant' with its grammatical variations and cognate expressions means and includes a person, who as lessee, sub-lessee, mortgagee, or sub-mortgagee, or in good faith believing himself to be lessee, sub-lessee, mortgagee or sub-mortgagee of land, is in possession thereof or who with the intention of paying the customary rent to the person entitled to cultivate or let waste land, brings such land under cultivation and is in occupation thereof as cultivator after giving due notice of his intention to do so in writing to such person and if such person has not within 30 days of the receipt of the notice raised any objection thereto in writing;

(c) 'agriculture' includes horticulture, the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees, sericulture and the growing of fruits, vegetables and the like;

(d) 'board' means a Debt Conciliation Board established under sub-section (1) of section 3;

(e) 'creditor' means a person to whom a debt is owing and includes a co-operative society;

(f) 'debt' means all liabilities owing to a creditor, in cash or kind, secured or unsecured, whether payable under a decree or order of a civil court or otherwise, and whether mature or not, but shall not include arrears of wages, and revenue or anything recoverable as an arrear of land revenue or any money for the recovery of which a suit is barred by limitation;

(g) 'debtor' means a person—

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(i) who earns his livlihood mainly by agriculture or who is a tenant or landlord whether he cultivates the land personally or otherwise; and

(ii) whose debts exceed one hudred rupees;

(h) 'prescribed' means prescribed by rules made under this Regulation;

(i) 'secured debt' includes mortgage debt or any debt for which there is security, lien or charge on immoveable property created by deed, statute or otherwise;

(j) 'secured creditor' means a creditor who holds for his debt a security by way of mortgage, lien or charge on immovable property created by a deed, statute or otherwise.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:

"In section 2 (f) of the Bill introduce the words 'or any debt or other liability due to the Government' between the words 'arrear of land revenue' and the words 'or any money'.

The reason why this amendment is proposed is obvious. It will never do to include the debts due to Government in the category of debts that may be conciliated by these boards. Hon'ble Members are well aware that the Government, in order to meet obligations have to frame budgets and to regulate their expenditure, anticipating amounts and if such amounts are subject to fluctuations—that might possibly result if amounts are subject to conciliation—the inconvenience caused to the public is easily understandable. As a matter of policy Government are compelled to move this amendment which I hope Hon'ble Members will readily accept.

Dr. A. R. Menon *(Pallippuram).*—Can you give us an idea of the amounts that come under this head?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I can only give the various categories and not the amount. It may be considerable, for instance the amounts due to Government from contractors, like Abkari and Forest, Agricultural Loans etc.

Dr. A. R. Menon *(Pallippuram).*—But agricultural loan are secure.

Mr. Thomas Manjuran *(Government Advocate and La.. Officer).*—Such debts too could be conciliated.

Budget is framed after taking into account the amounts that are likely to be realised that year. Any serious interference to the budget naturally will result seriously to the public and not so much to the Government After all Government money

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is public money to be spent for the public purpose. Any interference directly affects the public and the utility that has to be provided.

Dr. A. R. Menon *(Pallippuram).*—I second it.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—There is another clause coming after this which makes this amendment necessary.

Amendment was put and carried.

Mr. C. S. Viswanatha Ayyar *(Chittur Tattamangalam Town).*—I beg to move the following amendment: In section 2 (f) after the words 'barred by limitation' add the words 'or any debt which had its origin after 1st Chingam 1106'.

The amendment that I intend moving is a very reasonable one and I think it will be acceptable to the House. By this amendment I am for fixing the operation of this Regulation to debts which had their origin prior to 1106 alone and not to subsequent debts. The promoters of this Bill here and elsewhere have always based their arguments on the fact that the economic depression has considerably brought down the prices of both the agricultural produce and the lands in such a way that the debtor finds it difficult to meet the obligations incurred by him prior to the setting in of the depression. But after the depression the creditor will not lend anything more than the bearing capacity of the land nor will the debtor run in for more debts. The depression therefore does not affect the transactions taking place today since both the creditor and the debtor enter into transactions with due considerations to existing circumstances. Therefore the argument that since the price of agricultural commodities have been adversely affected the obligations of the debtor must be reduced by the State will have no force with regard to debts incurred after the commencement of the depression. As to the date of the commencement of the depression I can only invite the attention of this Hon'ble House to the findings of the Travancore Debt Redemption Committee wherein they say "We, therefore, consider that, the steep fall in prices having begun in 1105, the depression may be considered to have started from the beginning of that year". To be on safer grounds I have put it at 1106. Even in Travancore a differentiation is made between debts contracted prior and subsequent to 1105 and our Regulation as it now stands wants to treat the whole thing on the same footing. This Regulation is expropriatory in character and hence all precautions have to

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be taken to ensure a smooth working of this legislation. Even according to the Government the depression has begun to fade away and the necessity for a Bill of this nature become obsolete. But we shall not now question that since the house has accepted the principle of this Bill. The illustration that I have given in my minute of dissent will clearly demonstrate the reasonableness of my amendment and I appeal to the House to consider my amendment dispassionately and persuade itself into accepting it. This amendment if accepted will dispel the fear of the creditor class to a very great extent, the fear that the Legislature is forging weapons after weapons to fight the creditor class alone. Again with the full operation of the Usurious Loans Bill much of the difficulties of the debtor class will be removed and they are seen to be placed on a better footing. My amendment is only consistent with the objects and reasons of this Regulation and a very harmless one, at the same time appeasing the fears of one important class of His Highness' subjects. For these reasons, I move this amendment restricting the operation of the provisions of this Regulation to debts having their origin before the commencement of the depression, i. e., 1st Chingam 1106.

Mr. C. P. Lonappan (*Commerce and Industry*).—I second it.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri).*—I oppose this amendment.

Amendment was put and negatived.

Clause 2, as amended, was put and carried.

Deputy President.—The question is that Clause 3 stand part of the Bill.

Establishment and constitution of boards.

3. (1) The Government may establish a Debt Conciliation Board for any village or group of villages. Such board shall consist of a Chairman and two members appointed by the Government. Two of the members shall ordinarily be non-officials and the Chairman shall be nominated by the Government. The Government may, for reasons to be recorded in writing, cancel the appointment of the Chairman or any member of the board or dissolve any board and from the date of such dissolution the board shall cease to exist.

(2) The Chairman and every member of a board so established shall be appointed for a term not exceeding three years. Such Chairman or member may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

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(3) A board shall have such quorum as may be prescribed.

(4) Where the Chairman and members of a board are unable to agree, the opinion of the majority shall prevail. Where the board is equally divided, the Chairman shall have a casting vote.

(5) When a board is dissolved or otherwise ceases to exist, the Government may, at any time, establish another board for the area for which the former board was established and may declare the board newly established to be the successor-in-office of the board which has ceased to exist and such board shall exercise all the powers under this Regulation.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to move the following amendment:

Delete the first three sentences in section 3 (1) of the Bill and substitute for them the following:—

'The Government may establish a Debt Conciliation Board for such areas as may be specified by Government. Such Board shall consist of a Chairman and two Members appointed by the Government. One at least of the Members shall be a non-official'.

Now, in the Select Committee Report section 3 (i) reads "The Government may establish a Debt Conciliation Board for any village or group of villages. Such Board shall consist of a Chairman and two Members appointed by the Government. Two of the Members shall ordinarily be non-officials and the ....." Instead of that I propose that this amendment may be adopted. The real difference is with regard to the retention of at least one non-official. The only difficulty is with regard to areas of the Boards. Districts will not do for us for Cochin is a small State. Taluks of the State are small. So a board for each is not necessary. Therefore, the matter is left to the discretion of the Government. I think that will have no objection. The Government may establish a Debt Conciliation Board for such areas as may be specified by Government. In these circumstances, I would submit that the amendment may be adopted. No real change is introduced. Only this little difference.

Mr. V. K. Krishnankutty *(Anthikad)*—I second it.

Amendment was put and carried.

Mr. C. S. Visawanatha Ayyar *(Chittur-Tattamangalam Town).*—In section 3(1) of the bill delete .....

Deputy President.—In so far as the amendment moved by the Law Member has been accepted, this amendment, as it is, will be out of order. Only the portion *'The Chairman shall be a person who holds or has held an office not lower in rank*

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than that of a subordinate Judge or a Deputy Collector of British India, or a District Judge or a Diwan Peishkar of this State' can be brought in as an amendment.

Mr. Thomas Manjuran *(Govêrnment Advocate and Law Officer.)*—I have no objection for it. But may I ask the Hon'ble Member for Chittur whether the amendment that has now been passed is not enough. The Government appoints the Committee and it will select the proper Members.

Mr. C. S. Viswanatha Ayyar *(Chittur Tattamangalam Town).*—The amendment is in conformity with the British Act. Further I want to fix the qualifications of the Members and the Chairman. So I move the following amendment to section 3 (1): 'The Chairman shall be a person who holds or has held an office not lower in rank than that of a Subordinate Judge or a Deputy Collector of British India, or a District Judge or a Diwan Peishkar of this State'.

Mr. President Sir, the Regulation as it now stands does not prescribe the qualifications of the Members of the Board and it is quite possible that persons who are today appointed as Members of the Panchayats or even persons of lessor qualifications can perform the functions of the Board. It is highly necessary for us to prescribe certain qualifications for Membership of the board, both in view of the importance of the Bill and the nature of the working of the Bill. The provisions of the Limitation Regulation, the Civil Procedure Code, Evidence Act, etc., will apply to various proceedings of the Board and added to these persons specialised in law are also allowed to appear before the Board. Even in the Panchayat Courts, lawyears are not allowed to appear and questions of law are always kept outside the jurisdiction of the Panchayat Courts. Those courts simply decide matters of fact alone and hence only robust common-sense alone is needed to discharge the functions of a Panchayat Court Member. But here the case is quite different and the Boards will be called upon to settle disputes and claims involving many thousands of rupees. It is our duty to see that the Regulation is framed in such a way as to infuse confidence in its working in the minds of the public. In this connection I may be allowed to quote the words of Mr. T. A. Ramalingam Chettiar, the sponsor of the Madras Bill in the course of his address at the seventh annual conference of the Primary Land Mortgage Bank held in Madras in October last wherein he said "The boards to be constituted should provide for a person with legal training as the procedure is a bit complicated, a person

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with revenue experience and a person connected with Land Mortgage Bank". Our Regulation lacks in these essentials and my amendment only attempts at filling up this gap. By accepting my amendment the House will only infuse more confidence in the minds of the public without which confidence the work of the Board will become difficult and troublesome. Mr. Ramalingam Chetty again says "We have in most areas retired Judicial Officers and retired Deputy Collectors who will, I have no doubt, be willing to devote a portion of their time for the benefit of their fellow countrymen". This observation is quite true with regard to the conditions prevailing in our State also. Let the Board have in it a Member with Judicial training and another with revenue experience and the creditor class must also be represented on the Board. Without the full cooperation of the creditor class this scheme is bound to end in failure and hence every attempt should be made to enlist their sympathy and dispel their fears about the working of the Regulation. The creditor class can appreciate their own difficulties and a representation of this class will always have great influence over other creditors while appearing before the Board. The Bhavanagar scheme wherein the debts of debtors were liquidated by special Board appointed by that Government and there is an instance where the Board had representation from the creditor class. In Bhavanagar Sub-section B to section 2 of the scheme says as follows "The creditors of the Mahal whose outstanding accounts with the Eheduts are to be liquidated, will nominate two respectable panch, who will be appointed to the Committee as Members representing the creditors". (Page 60) In Bhavanagar also provision is made for a judicial and a Revenue officer to be Members of the Board. Bhavanagar is standing as the shining example of State Aid to debt relief and when that State has found it necessary to give places to Judicial and Revenue officers as well to representatives of creditors I beg to submit that we should as responsible Members must lay down definite minimum qualification for the Members of the oard. My amendment only seeks to lay down such qualification with a view to ensure the co-operation of all classes in the working of the Regulation and I hope that the House will find its way to accept this useful and necessary amendment.

Mr. C. P. Lonappan *(Commerce and Industry).*—I second it.

Dr. A. R. Menon *(Pallippuram).*—I have not got any objection to any of the provisions contained there. My point is that all those conditions can be fulfilled by the amendment

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of the Government. I perfectly agree that all his observations can be carried into effect under the amendment moved by the Government Advocate. I am not objecting to any of the statements made but they can be carried out.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri).*—I oppose the amendment in the form in which it is brought, listening to the long speech delivered. To my thinking the principle underlying behind is one of conciliation but it is attempted to be converted into one of warfare. I do not find my way to accept it.

Amendment was put and negatived.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Add the following as sub-section (6) to section 3 of the Bill:—

"(6) The Government may define the Local and pecuniary jurisdiction of each Board". There may be cases where all Boards may not be of uniform ability. Just as we have got a hierarchy of courts we might want a supreme court which will deal exclusively with highest amounts. For that purpose while ordinary Boards will have ordinary jurisdiction the highest Boards may be reserved for highest amounts.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—I second it.

Amendment was put and carried.

Clause 3 as amended was put and carried.

Deputy President.—The question is that clauses 4, 5 and 6 stand part of the Bill.

Application for settlement between debtor and his creditors.

4. (1) A debtor may make an application for the settlement of his debts to the board established for the local area within which he ordinarily resides, or if no board has been established for that local area to the board established for any local area in which he holds immovable property, if any, but he shall not apply to more than one board.

(2) Unless the dobtor has already made an application under sub-section (1), any of his creditors may make an application to a board to which the debtor might have applied under that sub-section.

(3) If applications for the settlement of the debts of the same debtor are made to more than one board, such applications shall, in accordance with rules made under this Regulation, be transferred to and dealt with by one board as one single application.

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5. Every application to the board shall be in writing and shall be signed and verified in the manner prescribed by the Cochin Civil Procedure Code for signing and verifying plaints.

Verification of application.

6. (1) Every application made by a debtor to a board shall contain the following particulars namely :—

Particulars to be stated in application.

(a) a statement that the debtor is unable to pay his debts ;

(b) the place where he resides;

(c) the amount and particulars of all claims against him together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and deligence be ascertained by him; and

(d) particulars of the debtor's property, both movable and immovable (including claims due to him), a specification of the value thereof and of the places where the same may be found and details of any mortgage, lien or charge subsisting thereon.

(2) Every application made by a creditor shall contain the following particulars, namely:—

(a) the place where the debtor resides ; and

(b) the amount and particulars of his claim against such debtor.

Clauses were put and carried.

Deputy President.—The question is that clause 7 stand part of the Bill.

7. The application shall be rejected if it does not comply with any of the requirements mentioned in sections 5 and 6.

Rejection of application.

The rejection of an application under this section shall not preclude the applicant from making a fresh application.

Mr. C. S. Viswantha Ayyar *(Chittur Tattamangalam Town).*—In section 7, after the words 'a fresh application' add the words 'within one month'.

This section as at present stands will really do some mischief. No time limit is fixed within which a fresh application has to be brought in, either by the debtor or by the cerditor. It is a primary duty of any Legislature to fix a period within which a subject is entitled to seek its aid. To illustrate my point, I shall take an example and try to explain to the House the difficulties that are likely to arise by retaining this section as it is. Suppose a debtor makes an application to the Board and it is rejected under one of the grounds set forth in Sections 5 and 6 of the Regulation. Then again keeps quiet for about a year. Then the creditor has sufficient reason to think

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that the debtor is not earnest about the relief afforded by the regulation and so he, the creditor seeks redress at the hands of the Civil Court. Just in the course of the trial of that suit, the debtor again makes an application to the board. Then the proceedings in the court automatically comes to a standstill and all the money spent by the creditor, the troubles undergone by him becomes a sheer waste. The debtor should not by his conduct or otherwise create in the minds of the creditor that the remedies allowed by this legislation are not going to be sought after by him. Even in law, there is such a thing called, 'estoppel' and 'resjudicata' but peculiarly enough such wholesome provisions and safeguards seem to be foreign to this peculiar legislation. Even under law, if a suit or petition is rejected another petition for restoration must be filed within a reasonable time and it is not for nothing that such provisions are made in the various enactments. By the deliberate negligence or omission of one party, no party should be made by law to forego his rights or dues and hence it is abundantly clear and necessary that some limit must be fixed within which a fresh application or a restoration petition ought to be made by the defaulting party. For these reasons, I move this wholesome and necessary amendment to the existing section.

Dr. A. R. Menon *(Pallippuram).*—I second it.

The amendment was put and negatived.

Clause 7 was put and carried.

Deputy President.—The question is that clause 8 stand part of the Bill.

Procedure on application.

8. (1) On receipt of an application under section 4 the board shall unless it rejects the application under section 7 pass an order fixing a date and place for hearing the application.

(2) Notice of the order under sub-section (1) shall be sent by registered post to the debtor and creditors.

(3) If the application is made by a creditor, the debtor shall, on his appearance, furnish the particulars mentioned in sub-section (1) of section 6 and notice shall be sent to all the creditors specified by him.

Mr. C. S. Viswanatha Ayyar *(Chittur Tattamanglam Town).*—In section 8 (2) after the words 'registered post', add the words 'or registered anchal with acknowledgement due'.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—That is unnecessary. Post includes Anchal.

Amendment was, by leave, withdrawn.

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Clause 8 was put and carried.

Deputy President.—The question is that clause 9 stand part of the Bill.

Dismissal of application.

9. An application under section 4 may be dismissed by the board at any stage of the proceedings—

(a) if, for reasons to be stated in writing, the board does not consider it desirable or practicable to effect a settlement of debts; or

(b) if, in the opinion of the board, the applicant fails to pursue his application with due deligence :

Provided that, when such applicant is a creditor, the board, instead of dismissing such application, may substitute the debtor or any other creditor, who shall thereafter be deemed to be the applicant for the purposes of this Regulation; or

(c) if the application includes a claim which, in the opinion of the board, is collusive and intended to defraud any creditor.

Clause was put and carried.

Deputy President.—The question is that clause 10 stand part of the Bill.

Notice calling upon creditors to submit statements of debts.

10. (1) If, after examining the debtor, it is in the opinion of the board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served or published in the manner prescribed, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be in writing and shall be signed and verified in the manner prescribed by the Cochin Civil Procedure Code for signing and verifying claims and shall be submitted to the board within two months from the date of service or publication of the notice as the case may be :

Provided that, if the board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such direction, it may extend the period for the submission of his statement of the debt owed to him.

(2) Subject to the provisions of sub-section (3) every debt of which a statement is not submitted to the board in compliance with the provisions of sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged.

(3) If a creditor proves to the satisfaction of the board or a civil court that the notice was not served on him or that he had no knowledge of the publication thereof or that for some other sufficient reason, he was unable to submit the statement, the board or court may revive the debt, if the creditor files an application in that behalf within two months after he becomes aware of the proceedings taken under this section:

Provided that a creditor shall not be entitled to apply under this sub-section to the board and to a civil court simultaneously or to apply to either the board or a civil court after having applied to the other.

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Mr. C. S. Viswanatha Ayyar *(Chittur Tattamangalam Town).*—In section 10 (1) after the words 'issued and served', delete 'or' and insert 'and'. Again after the words 'date of service' delete 'or' and insert 'and'.

Mr. Shabdai S. Koder *(Jews).*—I second it.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Substitution of the word 'and' for 'or' makes a vital difference.

Mr. C. S. Viswanatha Ayyar *(Chittur Tattamangalam Town)* It is in the Madras Act.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I have not got it in the Madras Act with me.

Amendment was put and negatived.

Clause 10 was put and carried.

Deputy President.—The question is that clauses 11 to 13 stand part of the Bill.

Procedure on submission of statement of debts.

11. (1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section (1) of section 10 shall furnish, along with such statement full particulars of all such debts and shall, at the same time produce all documents, including entries in books of account on which he relies to support his claims together with a true copy of every such document.

(2) The board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document which is in the possession or under the control of the creditor is not produced by him as required by sub-section (1) the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming, under him for the recovery of the debt :

Provided the board or the court shall have power to excuse for valid reasons any default or delay in producing the document and to grant reasonable time for producing the same in any proceding pending before it.

Power of board to decide dispute as to the existence or amount of debts or assets.

12. (1) The board shall call upon the debtor and each creditor respectively to explain his case regarding each debt.

(2) If there is a dispute as to the existence or the amount of the debt due to any creditor or the assets of any debtor the board may decide the matter after taking such evidence as may be adduced by all the parties concerned and such decision shall be binding on all parties in all proceedings before the board ;

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Provided that a decree of a civil court relating to a debt shall be conclusive evidence as to the existence and amount of the debt.

(3) The board shall prepare a complete schedule of the creditors and of the assets and liabilities of the debtor.

Power of board to require attendance of persons and production of documents.

13. (1) Subject to rules made under this Regulation, a board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a civil court by the Cochin Civil Procedure Code.

(2) Any person present may be required by a board to furnish any information or to produce any document then and there in his possession or power.

Clauses were put and carried.

Deputy President.—The question is that clause 14 stand part of the Bill.

Agreement of amicable settlement, its registration and effect.

14. (1) If the creditors to whom more than fifty per cent of the total amount of the debtor's unsecured debts is owing together with or without any secured creditors come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording the amounts payable to such creditors and the manner in which, the assets from which and the times at which, they are to be paid. Such agreement if considered equitable by the board shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties who have agreed to the amicable settlement:

Provided that, when a co-operative society is one of such creditors no settlement, in so far as it affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co operative Societies:

Provided further that when a secured creditor does not agree to the settlement such settlement shall not affect his rights to proceed against the secured property.

Explanation.—The board shall not consider an agreement equitable unless, in addition to the assets, if any, set apart for the satisfaction of the agreed debts, there are in the opinion of the board sufficient assets of the debtor to satisfy at least to the same extent the non-agreed debts.

(2) An agreement made under sub-section (1) shall, within thirty days from the date of the making thereof, be registered under the Cochin Registration Regulation, V of 1084, by the Chairman of the board in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil court and be executable as such.

(3) For the purpose of the registration of an agreement under sub-section (2), the Chairman of the board shall be deemed to be an officer of the Government empowered to execute such agreement within the meaning of section 78 of the Cochin Registration Regulation, V of 1084.

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(4) If, after the making of an agreement under sub-section (1), any debt is revived by the board or a civil court under sub-section (3) of section 10, the agreement and all proceedings taken in pursuance thereof shall stand cancelled; the application under section 4 shall be deemed to have been received in the office of the board on the date of such reviver, and all the provisions of this Regulation shall apply in respect of the application accordingly.

Mr. Thomas Manjuran *(Government Advocate and Law Officer.)*—Sir, I beg to move the following amendmeut:

In Section 14 (1) of the Bill, delete the words ' if the creditors to whom more than 50 per cent. of the total amount of the debtors unsecured debts is owing together with or without any secured creditors' and substitute for them the words ' If the creditors to whom more than 50 per cent. of the total amount of the debtor's debt is owing.'

I shall put it in another way. In the Madras Bill, which the Select Committee has substantially followed, the corresponding provision is 'more than 50 per cent of the total amount of debts,' that 'is to say, both secured and unsecured. The variation was not made in the Select Committee. Now it will be as follows:—'If the creditors to whom more than 50 per cent of the total amount of the debts, both secured and unsecured, etc'. Hence the agreement is fair. In the present Bill as reported by the Select Committee, in making the agreement, only unsecured creditors are taken into account. But according to the Madras Act, all the creditors are to be taken into account. Government found on examination that this was not in accordance with the spirit of the law. This amendment is therefore proposed to restore the Bill back to the Madras Bill. In the Travancore Bill similar provisions exist. This being rather an experimental measure it is really noteworthy and so far as matters have been elaborately studied and considered by the Legislative Council, Government also went into the same matter, and I must confess, they do not deviate from the Madras Bill.

Dr. A. R. Menon *(Pallippuram).*—Suppose there are 25,000 secured and 10,000 unsecured. Secured creditors are not coming forward.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—There are two provisions here. I shall explain. That is the only remaining thing, except perhaps the matter of percentage. According to Section 14, if the creditors to whom more than 50 per cent of the amount of unsecured debt is owing such settlement shall forthwith be settled. If 50 per cent of the creditors do not agree, the agreement goes. It becomes a settled contract so far. With regard to creditors that do not

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agree they will be subject to certain inconveniences. Now, it may be asked, supposing these creditors do not agree, what will be the consequence? There is another section where if any creditor refuses to apply then the debtor applies. When during the hearing of an application any creditor refuses to come to an amicable settlement, the board shall, if it is of opinion, that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept grant the debtor a certificate in such form as may be prescribed in respect of the debt owned by him to such creditor. Where any creditor sues in a civil court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1) the court shall, notwithstanding the provisions of any law for the time being in force, not allow the plaintiff any costs in such suits or any interest on the debt after the date of such certificate in excess of simple interest at 3 per cent per annum on the principal amount due on the date of such certificates. Supposing a creditor applies for conciliation and if some of the creditors say no that is the worst thing that can happen, the board can say that since this debtor has offered the creditors a certain percentage of a certain amount which in the circumstances of the case, taking into consideration, (1) the fall or rise in the value of the land and its produce in the locality, (2) the amount of consideration actually received (3) the reasonableness of the rate of interest, and so on and so forth, after taking all these factors into consideration, the board comes into decision with the other debtors, and a certificate is issued. What is the effect of the certificate, you may ask. Sub-sections 2 and 3 give the answers for them. This is an indirect method of coercing men.

Mr. A. R. Menon *(Pallippuram).*—Even if the number of creditors is less than 50 per cent?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Yes. When the debtor makes an application, the 50 per cent question does not come in. The moment 50 per cent agree, the board must accept it. In the other case, the Board may or may not accept. Then there may be creditors who may be standing out. We are not willing to allow that conciliation. There may be 50 per cent willing. In that case, the penalty is again there.

Mr. K. Ayyappan *(Ezhuvas South.)*— That applies to both secured and unsecured debts.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Unsecured debts. Secured men will not offer. He

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can execute, he can proceed with the property, but he will be penalised. The law is not explanatory. It does not say that the secured creditor should not proceed with property secured. But short of that, the law introduces as many intricate thorns as possible. That is the idea. The amendment sought is in section 4, as I have read already, the original Madras Section 14. Here, the Select Committee introduced an amendment 'unsecured creditors'. Such an amendment is not necessary and is not warranted, by the practice elsewhere. I request that the amendment may be accepted. It does not make a substantial difference. I am sure the mover of the Bill will accept the amendment.

Mr. C. R. Iyyunni *(Trichur South).*—On a point of information. May I put a question? Suppose a debtor does not agree. Is there any penalty?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The Hon'ble Member for Chittur has made a suggestion. There is an amendment standing in his name.

Mr. A. V. Moothedan *(Chalakudy).*—I support the amendment. I closely followed the argument of the Law Member. It is better that we follow the Madras Act. I have another reason also. 50 per cent of the unsecured debtors have to put in an application. But it may so happen that there is no unsecured debt. Then there will be an anomaly. Hence, it is better to follow the Madras Act.

Mr. T. K. Nayar *(Pazhayannur).*—According to Section 18 (1)—perhaps we might have misunderstood that section—on the presentation of a petition by the debtor, is the hearing of the application that is contemplated in Section 1 after the Board gets consent of fifty per cent?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—No. Those are two different things.

Mr. C. R. Iyyunni *(Trichur South).*—Suppose, the debtors are putting a petition before the Board. He transfers his property.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—There are provisions here. They will be worthless transfers.

Mr. C. R. Iyyunni *(Trichur South.)*—An agreement is come to between the debtor and the creditor subsequently. Is there any specific provision?

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Yes. There are provisions in this, just like provisions in the Transfer of Property Act.

Mr. C. R. Iyyunni (*Trichur South*).—Does the Hon'ble Member refer to Section 20?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Yes. That is one.

Mr. P. Kumaran Ezhuthassan (*Vadakkancherri*).—I don't see eye to eye with the Government in saying that an application whether accepted by fifty per cent of secured or unsecured debtors, is agreed to, the work of the Board cannot go on.

Mr. Thomas Manjuran *(Government Advocate and Law officer).*—The work of conciliation is one, certification is another. Certification is based on conciliation. When a percentage of debtors and creditors agree, conciliation is effected. Under Section 14, conciliation is effected, but supposing there is no unanimous agreement, which is well-nigh impossible. When a certain percentage agrees, there is conciliation. The decision agreed upon by those aggrieved creditors should be accepted. That is Section 14. Suppose a debtor is absolutely willing to pay to the best of his ability. The board is not powerless. The man goes to the board and says: 'Look here, Sirs, I have got everything. I was willing to pay but they do not agree. You give me a certificate, that I am ready to pay'. That is sections 2 and 3.

Mr. P. Kumaran Ezhuthassan *(Vadakkancherri).*—There is nothing in section 18. What we find there is: 'Where during the hearing of any application made under Section 4, any creditor refuses to agree to an amicable settlement, the board shall, if it is of opinion that the debtor has made such creditor a fair offer which the creidtor ought reasonably to accept, grant the debtor a certificate in such form as may be prescribed in respect of the debts owed by him to such creditor'.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Where is the difficulty? Under section 4 the application is made by a debtor, and any creditor refuses to come to an amicable settlement. Suppose all of them refuse to agree.

Mr. P. Kumaran Ezhuthassan *(Vadakkancherri).*—No. It will not be possible.

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Grant the debtor a certificate. This may mean one debtor for all the debtors.

Deputy President.—The application is made under Section 4. If the percentage of creditors agree to a settlement, with regard to the way in which the debts can be conciliated, it has to be recorded in writing. Section 18 comes in only after that. That is, the Board sees that a settlement is possible, but no conciliation is effected. A certain percentage has come to the settlement of a Board. This is not reduced to writing. Section 18 does not come into operation.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—With the greatest deference to the Chair, I shall prove that it is correct. Take section 17. If no amicable settlement is arrived under sub-section (1) of section 14 within 12 months from the date of application under Section 4, the Board shall dismiss the application and such dismissal shall be a bar to the presentation of any futher application. What is the meaning of that? I think my position is correct. There is a penalty provided there, namely, that the Board shall dismiss the application and such dismissal shall be a bar to the presentation of any further application under Section 4. Now, if any creditor refused to agree to an amicable settlement, the board can grant the debtor a certificate. I refuse to accept the contention that such certificates can be issued only when 50 per cent refuses to agree. It would be stultifying the language of the Regulation and section 17 will be unnecessarily imposing a penalty.

Deputy President.—My statement as President should not bind anybody. But I think the Hon'ble the Government Advocate is entirely wrong. "Where during the hearing of an application under Section 4, any creditor refuses to agree to an amicable settlement..." Therefore, there must be a settlement before a certificate is issued. That is only reasonable to consider section 18 (1) coming after Section 14. Otherwise, all the proceedings are cancelled under Section 17, because there is no agreement contemplated by Section 14. I think Hon'ble Members are entitled to take their own view of the matter.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—This is my view and I think I am right.

Dr. A. R. Menon *(Pallippuram).*—There is no objection in making it clear, by way of explanation.

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Mr. T. S. Narayana Ayyar *(Secretary to Government)*.— My point is that the amendment now before the House has nothing to do with the interpretation of the two sections. I wish to make some preliminary remarks. Hon'ble Members are aware of the attitude of Government when this Bill was first introduced in this House. Having regard to the public interest taken in the progress of the Bill and the progress of similar legislation outside the State, Government have since decided to re-examine their position in the light of the alterations made by the Select Committee. This being a new piece of legislation, it was thought safer to keep it in line with the Madras Act. All such changes as are necessary to bring it into line with the Madras Act are, therefore, being suggested. The present one is an important amendment, probably the most important, and useful amendment, in the Bill. The utility of the amendment is apparent. Unless this is adopted, there will be no useful purpose in having a Board. As the Hon'ble Member for Chalakudy observed, suppose the debtor has only secured debts. He cannot, according to the language now adopted by the Select Committee, have any redress. Suppose a debtor has ten creditors of whom nine are secured creditors, only one being an unsecured creditor. What is he to do? Suppose, again, of the ten creditors, 8 are secured and 2 unsecured. All the secured creditors who do not come into the settlement can pursue their own remedy. What is the usefulness of the Board functioning in that way? It is more from this point of view that the amendment is brought.

*മിസ്റ്റർ ടി. കെ. നായർ. *(Pazhayannur)*.— സർ, ഈ അമെൻറുമെണ്ടിനെ സംബന്ധിച്ചു സിലക്ററു കമ്മിററിയിൽ വളരെ ഗൌരവമായി ഞങ്ങൾ ആലോചിക്കുകയുണ്ടായി. ടോട്ടൽ ഡെറ്റ് സിൻെറ പകുതി വിട്ടുകൊടുത്തു് അൺസെക്യൂർഡ് ഡെറേഴ്സിനു പകുതിയാക്കുവാൻ ഞങ്ങൾ അഭിപ്രായപ്പെട്ടതു ചില കാരണങ്ങൾകൊണ്ടാണു്. ഇതിൽ ഒരു കാര്യം മാത്രമേ ആലോചിക്കേണ്ടതുള്ളൂ. അൺസെക്യൂഡ് ഡെറേഴ്സിനു് ഇതിൽ എന്തെങ്കിലും ഒരു പിഴവുണ്ടെങ്കിൽ ആ പിഴവു് ഇല്ലാതാക്കേണ്ടതാണു്. വേറെ ടിക്കുകളിൽ ഈ ബോർഡ് ഫെയിലാകുന്നതിനുള്ള പ്രധാനകാരണം ഇപ്പോൾ ഇതു് ഇവിടെ ഇല്ലാത്തതുകൊണ്ടു് എൻെറ ദൃഷ്ടിയിൽ എനിക്കു തോന്നുന്നതു് അവിടെ ടോട്ടൽ ഡെറേഴ്സിനു പകുതി സമ്മതിച്ചിട്ടില്ലാത്തതുകൊണ്ടാണെന്നാണു്. എൻെറ അഭിപ്രായത്തിൽ ഈ ഒരു വകുപ്പു് ഇതിനനുകൂലമല്ല എന്നാണെനിക്കു തോന്നുന്നതു്. ഇതിൽ പണയക്കടക്കാരുടെ ഭാഗം വിട്ടിട്ടു് അൺസെക്യൂഡ് ഡെറേഴ്സിൻെറ കാര്യം മാത്രം എടുത്താൽ മതി. പണയക്കടക്കാരുടെ മുതലിനു് ഒരുപ്രകാരത്തിലും പോക്കില്ല. അൺ

* Speech not corrected by the Hon'ble Member.

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സെക്യൂഡ് ഡെറേഴ്സിന്റെ കാര്യത്തിൽ പകുതിവീതം സമ്മതിച്ച് ഒരു എഗ്രിമെണ്ട് ഉണ്ടാക്കിയാൽ പിന്നെ പണയക്കാരുടെ സംഖ്യക്കു എന്താണു നഷ്ടം വരാൻ പോകുന്നതു?

മിസ്റ്റർ തോമസ് മാഞ്ഞൂരാൻ. *(Government Advocate and Law Officer).*—അതാണ് ക്ലാസ് ഫൈവ് (ഫ)-ൽ പറഞ്ഞിരിക്കുന്നതു്.

മിസ്റ്റർ ടി. കെ. നായർ (*Pazhayannur*).—ബോർഡിന്റെ സമ്മതപ്രകാരം തീരാതെ കേസു കൊടുക്കുന്നവക്കാണു നഷ്ടമുള്ളതു്. ബോർഡിൽനിന്നും ന്യായമായിട്ട് പണയക്കടക്കാക്കിന്നതു്, വെൺനിലക്കടക്കാക്കിന്നതു എന്നു തീരുമാനിക്കുന്നതിനെ അനുസരിക്കുവാൻ സമ്മതമില്ലാതെ കേസു കൊടുക്കുന്നവക്കാണ് നഷ്ടം വരുന്നതു്. അല്ലാതെ അതിനെ അനുസരിക്കുന്നതായാൽ എന്താണു നഷ്ടം വരാനിടയുള്ളതു്?

(The Hon'ble the President occupied the Chair at this stage.)

മിസ്റ്റർ തോമസ് മാഞ്ഞൂരാൻ *(Government Advocate and Law Officer).* അതനുസരിക്കുന്നുവെങ്കിലല്ലേ?

മിസ്റ്റർ ടി. കെ. നായർ (*Pazhayannur*).— ഡെറ്റു കൺസിലിയേഷൻ ബോർഡിന്റെ ഉദ്ദേശംതന്നെ എന്താണു്. ബോർഡിലെ തീരുമാനങ്ങളെ അനുസരിക്കാതെ വരുമ്പോഴാണ് അതു ഫെയിലാകുന്നതു്. അതാണു പ്രധാന കാരണം.

മിസ്റ്റർ തോമസ് മാഞ്ഞൂരാൻ.— *(Government Advocate and Law Officer).*— അതു ശരിയല്ല.

മിസ്റ്റർ ടി. കെ. നായർ (*Pazhayannur*).— ഇതിലും കൂടുതൽ ശക്തിയായി പറയുവാൻ പ്രയാസമാണു്. ഫാസ്റ്റു നു മുമ്പു്, അതായതു ക്ഷാമം തുടങ്ങുന്നതിനുമുമ്പു് ഒരാൾക്കു ഫ,൦൦൦ രൂപയുടെ പണയക്കടമുണ്ടു്. ആ ഫ,൦൦൦ രൂപാ കൊടുത്തുതീർക്കുവാൻ അയാൾ ബോർഡിലേക്കു് അപേക്ഷിക്കുന്നുവെങ്കിൽ, എനിക്കു ഫ,൦൦൦ രൂപായുടെ കടമുണ്ടു്, എന്റെ കുടുംബത്തിൽ ഈ പണയ വസ്തു മാത്രമല്ലാതെ വേറെ മുതലില്ല, ആകെ ഇതേ ഉള്ളൂ എന്നു പറയുകയാണെങ്കിൽ ആ കടക്കാരന്റെ കാര്യത്തിൽ സമാധാനം വരുത്തേണ്ടതാണു്. അൺസെക്യൂഡ് ഡെറ്റുസ് പകുതിയാക്കിക്കൊടുക്കുന്നതാണു് മദ്ധ്യസ്ഥതാബോർഡിന്റെ ഉദ്ദേശമെന്നാണു ഞാൻ ധരിച്ചിട്ടുള്ളതു്. അതല്ലെങ്കിൽ പിന്നെ കടക്കാരനു നോട്ടീസ്സു കൊടുക്കുന്ന കാര്യത്തിൽ ബോർഡ് പ്രവേശിക്കണ്ടേ?

മിസ്റ്റർ തോമസ് മാഞ്ഞൂരാൻ *(Government Advocate and Law Officer).*— അതാണോ തെറ്റു്?

മിസ്റ്റർ ടി. കെ. നായർ (*Pazhayannur*).—അതു തെറ്റല്ലെങ്കിൽ തെറ്റല്ലെന്നു ബോദ്ധ്യപ്പെടുത്തിത്തന്നാൽ മതി, ഞാൻ ഈ അമെൻറുമെൻറിനെ സമ്മതിക്കാം. ഈ കാര്യത്തെ സംബന്ധിച്ചു ഗവമ്മെണ്ടു്

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അഡ്വക്കേറ്റും ഡെപ്യൂട്ടി പ്രസിഡണ്ടും തമ്മിൽ നിയമത്തിൽ തർക്കം വന്നിരിക്കുന്നു.

മിസ്റ്റർ സി. എസ്സ്. വിശ്വനാഥയ്യർ (*Chittur-Tattamangalam Town*).— മദ്രാസ് ആക്ടിൽ ഇങ്ങനെയാണ്.

മിസ്റ്റർ ടി. കെ. നായർ (*Pazhayannur*).— ഈ നിലയിൽ മറ്റു സ്ഥലങ്ങളിൽ ഫെയിലാകുന്നുണ്ടെങ്കിൽതന്നെ കൊച്ചീരാജ്യത്തു് അതു തീർച്ചയായും സക്സസ്സ് ആണെന്നാണ് എന്റെ ബോദ്ധ്യം. മദ്രാസിലും തിരുവിതാംകൂറിലും ഉള്ള ആളുകളെല്ലാം കുടുമ്മാരാണെങ്കിൽ ഇവിടെ എന്റെ കണ്ണു കുത്തിപ്പൊട്ടിക്കുവാൻ ഞാൻ തയ്യാറില്ല. മദ്രാസിലും തിരുവിതാംകൂറിലും ഇവിടെയും ഉള്ളവരെല്ലാം മനുഷ്യർ തന്നെയാണ്. ഈ ഒരു ഭാഗം എനിക്കു പ്രധാനമായി ഗവർമെണ്ടു ഭാഗത്തു നിന്നു ബോദ്ധ്യപ്പെടുത്തിത്തരണം. അൺസെക്യൂഡ് ഡെറ്റ്സ് ഇല്ലെങ്കിലോ എന്നു ഇവിടെ ചോദിക്കയുണ്ടായി. അതിനെതിരായിട്ടാണ് ഞാൻ ഈ ചോദ്യം ചോദിക്കുന്നതു്. അങ്ങനെയാണെങ്കിൽ അതിലേക്കും ഒരു വകുപ്പു കാണണം.

മിസ്റ്റർ എ. വി. മൂത്തേടൻ (*Chalakkudi*).— ഏതാണു വകുപ്പ്?

മിസ്റ്റർ ടി. കെ. നായർ (*Pazhayannur*).— വകുപ്പില്ലെങ്കിൽ ഉണ്ടാക്കണമെന്നാണു ഞാൻ പറയുന്നതു്. ഇതു ഞാൻ പറയുന്നതിനു പ്രത്യേകം കാരണമുണ്ടു്. ഏതായാലും ഈ ഒരു ക്ലാസുകൊണ്ടു് ഇങ്ങനെയൊരു കാര്യത്തിൽ ഏതു നിലയിലാണ് സക്സസ്സു് വരുത്തുവാൻ പോകുന്നതെന്നു് എന്നെ പറഞ്ഞു ബോദ്ധ്യപ്പെടുത്തിയാൽ ഈ സെക്ഷനെ ഞാൻ സപ്പോർട്ടു ചെയ്യാം.

Mr. A. Sankara Menon (*Trippunithura*)—Sir, I oppose this amendment. The Bill is intended to give facilities to effect conciliation. Therefore, as much facility as is possible must be given to have the matter heard and agreements made. Now, if the secured debts amount to 50 per cent of the debts of a particular debtor, suppose he wants to go before the Board, he can go. But some of the secured creditors would have to agree to the matter being taken to the Board.

Mr. T. S. Narayana Ayyar (*Secretary to Government*).— It is wrong to assume that some of the secured creditors should necessarily agree. The amendment involves no such consequences. Half the total amount of the debts, whether secured or unsecured—that is the criterion. The Board must be in a position to effect conciliation at least in respect of half the debts of the debtor.

Mr. A. Sankara Menon (*Trippunithura*).—I think the nterruption was unnecessary. I put may argument clearly.

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Suppose the debtor has four creditors of whom two are secured and two unsecured. The two unsecured creditors make up 60 per cent of the debts and with regard to secured debts it amounts to 40 per cent. What is it that would happen if the secured creditors do not agree? It is necessary to have only 20 per cent of the debts to be represented before the Board, in order that the Board may function according to the section as it now stands. That is what we want. If this amendment is accepted we have to get the consent of secured creditors representing at least 10 per cent of the debts even though all the unsecured creditors give their consent. It is clear therefore that the clause as it now stands gives more facilities to the debtor. The secured creditors will almost always be in a safe position and is not inclined to come forward. It will be very difficult to get the secured creditors join in order that the Board may function. Therefore I think this amendment is not necessary. This amendment was elaborately gone through at the time the matter was taken up by the Select Commttiee. And it was after great deliberation that this deviation was made by us from the Madras Act. I may mention for the information of the Hon'ble House that when the Bill was first taken before the Select Committee at the first meeting, it was argued by one of the Hon'ble Members, Mr. C. S. Viswanatha Ayyar, that the Madras Act had already been passed and therefore that may be taken as a model. We agreed to take that as a model and made only certain amendments in that. This is a most important amendment that we made. There is no reason why this House should go back upon that. There would be very great obstacles in the way of the Board functioning, and in the way of affording relief to debtors, if this amendment was adopted.

Mr. A. V. Mootheden, *(Chalakkudy)*.—Sir, in supporting the amendment I wish to add one or two words. There was a lot of discussion in the Select Committee on this point. Some of the Members of the Select Committee including myself suggested that the Madras Act may be followed. Others wanted the provision in the original Bill i.e. 25 per cent of the creditors to whom the total amount of the debtor's debts is owing. As a compromise the Hon'ble the Deputy President suggested the provision in the Bill now before the House.

After further consideration, I find that there is a defect in this provision, as I pointed out just now. What shall we do, if there is no unsecured creditor? I am sure there will be several cases in which all the creditors are secured creditors

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and if we do not accept the amendment proposed by the Hon'ble the Law Member, such debtors who are entitled to apply to the Board and who have no unsecured creditors, will get no relief by this Act. Our object is to help all debtors who are unable to pay their debts. Therefore my submission is that we should accept the amendment proposed by the Government, so that this act may apply to all debtors whether they have unsecured creditors or not.

Mr. Thomas Manjuran *(Government Advocate and Law Officer)*.—May I make certain points on which the Hon'ble Member for Pazhayannur based his objection clear. I know it has given rise to controversy. Let us examine that carefully and dispassionately for a moment. What I maintain is that we can only bring our amendment into line with the Madras Act. So far as I can understand there are two substantial provisions, one is when a man applies for getting his debts conciliated, there are two possible things. One is 50 per cent of his creditors should agree. Let us ignore the controversy, secured and unsecured. 50 per cent may agree to the conciliation and 50 per cent may not agree. My argument is that when 50 per cent of the debtors consent to an agreement, that agreement must be accepted by the Board, provided it satisfies cartain conditions. And then that is registered and becomes a decree. That is the one kind of relief that the Board can give. Suppose for instance no creditor agrees. The debtor comes in and files a petition. He comes to the Board and says: 'Look here, I have got so much property. I am going to place everything before you, to the creditors, but the fellows will not accept it'. Is the Board to send that man merely because the creditors won't accept it? There is no relief here. I say Section 18 says, in such cases where creditors won't agree, he need not go empty-handed. He can apply to the Board. He can tell the Board that he is prepared to offer payment. Then it is for the board to examine whether that offer is fair. If it thinks so, it can issue him a certificate. Let us not confuse the decree passed under section 14. When a certificate is issued under section 18 with that restriction in mind, the whole thing will be clear. The protagonists of the bill say that unless and until 50 per cent of the unsecured debtors agree, the debtor can get no relief. That is the contention. I only say that my position is right. Let us see whether this contention is right. Under section 4 of the bill provision is made for application for settlement between debtors and creditors. Provision is made in section 5 for verification of the application. Then section 6 contains particulars to be stated in the application. The application

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shall be rejected under certain conditions. That is section 7. That is preliminary. Then section 8. Unless it summarily rejects the application mentioned in clauses 6 and 7, it shall post the application for hearing. Thus far we are clear. Now let us proceed. Section 10 deals with the notice calling upon creditors to submit statement of debts, and section 11 lays down the procedure on submission of statement of debts as in the case of insolvency. Then section 12, deals with the power of the board to decide disputes as to the existence or amount of debts or assets. That is, there will be fraudulent debts and on things like that the board can give decisions. Section 13 specifies the power of the board to require attendance of persons and production of documents. Section 14. What has the board to do in this? The board receives an application. It is not rejected but is posted for hearing after notice. Parties are given notice and they appear. "If the creditors to whom more than 50 per cent of the total amount of the debtors' unsecured debts is owing...." And so on. Ignore the word 'unsecured' for some time and to follow under the next section, that is, 4:—

"If after the making of an agreement under sub-section 1, any debt is received by the Board, or a Civil Court, under sub-section (c) of Section 10, the agreement and all proceedings taken in pursuance thereof shall stand cancelled." No decree shall be passed.

Section 15—we are not concerned. Section 16 deals with the maximum amount available in satisfaction of a debt. Again we are not concerned with that. Section 17. That is in relation with Section 14. Conciliation can be effected only if 50 per cent of the people can agree. Now, the all-important Section comes 18. "Where during the hearing of an application made under Section 4, any creditor refuses to agree to an amicable settlement, the Board shall, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate in such form as may be prepared in respect of the debt owed by him to such creditor." I fail to see how this clause is qualified. The Hon'ble Deputy President's contention is that that clause can be invoked. My argument is that that section does not say that certificates can be issued only in case 50 per cent of the creditors agree. On the other hand, it contemplates cases where more than 50 per cent or not even 50 per cent agrees. What is stated is what should be done if a creditor refuses to agree to an amicable settlement? If there is no provision for this, it would be absurd. Supposing a man applies, and not one creditor is willing to conciliate. Is that board to send that man away? It is for that eventuality that the Act provides that the board can independently examine. Here is a man

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who has come before us. He says he is willing to pay and we issued him a certificate, in such form as is prescribed. The board, in coming to a decision, may take into consideration the fall or rise in the value of land, &c., &c. Now the other two sections can also be explained. Sub-section (2)—That is a certificate against him; that is, the debtor applies to the board to grant him a certificate that he has offered whatever he has. In such cases the Act says where any board issues a certificate under Sub-section (1) the court shall, notwithstanding the provisions of the Law for the time being in force, not allow the plaintiff any cost in such suits or any interest on the debts after such certificates in excess of simple interest at 3 per cent per annum on the principal amount due on the date of such certificates.

Then the next clause 18 (3) reads thus:—

"Where after the registration of an agreement under sub-section (2) of section 14, any unsecured creditor sues for the recovery of a debt (other than a debt incurred subsequent to such agreement) in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit shall, notwithstanding anything contained in the Cochin Civil Procedure Code not be executed as against the assets, if any, set apart in the agreement for the satisfaction of the agreed debts until all amounts recorded as payable under such agreement have been paid."

To make a long narrative short, the debtor who comes to the board has two remedies. Notice is given to the creditors. They are asked to conciliate, they may or may not. If they conciliate well and good. If per chance they are not willing to conciliate, either one or all of the creditors, the Board has full authority under section 18 to consider independently the offer that has been made to pay all the creditors for the reasons mentioned there and shall give immediately a certificate to this creditor, in order to show to the outside world that this man has been willing to do his best. These creditors who wanted to get the last pie should not be given more than 3 per cent interest and no costs. If that is not the reasonable interpretation of the section I fail to see which is. After thinking over the matter for months and months the advice is that it is an absolutely futile measure. The mere inertia of the creditor will be enough to kill the Bill, if only section 14 of the Bill is interpreted otherwise. Section 18 has no independent force.

Dr. A. R. Menon *(Pallippuram).*—We only ask whether it can be made more intelligible to us?

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*— The question is whether the Bill as it exists is meaningless or whether it contains beneficial provisions. According to the construction of the Deputy President the Bill is absolutely premature and unless the creditors voluntarily come no further remedy will be forthcoming. My construction is whether the creditors come and agree or not the debtor has got a relief. If he approaches the board with a genuine and satisfactory offer he gets a certificate. That is the difference between us and I believe this construction is right. This and no other construction can give the Bill any meaning. It is not likely that the creditors will flock to the Board. If the creditors do not accept the offer wisely the debtor gets a certificate and that certificate becomes the Magna Charta. When he sues he will not be given more than three per cent and he will get no costs.

Mr. P. Kumaran Ezhuthassan (*Vadakkancherri*).—Will you please tell us which provision under the Regulation imposes that penalty?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Section 18 (2).

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri).*—Section 18 (2) does not. It contemplates only the case of a particular class of creditors.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Section 18 (2) says where any creditor sues in a Civil Court for the recovery of a debt in respect of which a certificate has been granted . . . .

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri).*—Under sub-section (1).

Dr A. R. Menon *(Pallippuram).*—We would rather wish that it is made more intelligible.

Mr. Thomas Manjuran *(Government Advocate and Law Officer.*—My argument is this. Presuming for argument's sake that my contention is correct then the other difficulty automatically vanishes. Supposing under that section the creditors refuse to conciliate and suppose my construction of the section is right. Now the creditors refuse to conciliate. During the course of conciliation the debtor approaches the board and says that the creditors want his last drop of blood and refuses to conciliate. The Board immediately issues a certificate and then the creditor will get only a moiety. Conciliation is dealt

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with by section 14. Nothing other than conciliation by intimidation is given by section 18. But probably justified intimidation in the circumstances of the case. Assuming the Government's amendment is accepted, and if the construction given by me is correct there is then nothing to fear. If the secured creditors do not co-operate the board will issue a certificate to the debtor and that certificate will be shown to the Court if the man sues in a court of law and will get only three per cent interest and no costs.

Mr. President.—Under section 14 if 50 per cent of the unsecured creditors have agreed is it binding on the other 50 per cent?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—If 50 per cent agree the other fifty per cent are bound by that according to the Madras Act.

Mr. President.—We are concerned with our Bill. Under section 14 fifty per cent of the unsecured creditors have agreed to take up a certain proportion and the board gives an award. Will that award be binding on the other secured creditors as well?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Yes. He can proceed against the security but subject to section 18 (3). That is the penalty introduced.

Mr. President.—What I want to know is whether a settlement arrived at under section 14 (1) and accepted by the Board is binding upon the secured creditors also?

Mr. Thomas Manjuran *(Government Adocate and Law Officer).*—In the sense that they cannot sue.

Mr. President.—I am asking about secured creditors, whether a settlement which has been arrived at under section 14 (1) and accepted by the Board will be binding upon the secured creditor?

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—It will be binding if he is a party to the settlement, but if he is not, it will not bind him.

Mr. President.—When a secured creditor is not a party and has not agreed, then that settlement is not binding upon him. Then he is in the same position as before. As a matter of fact if that is the intention of section 18 (1), I suppose it should be made clear.

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Mr. T. S. Narayana Ayyar *(Secretary toGovernment).*—There is this difference. Section 14 contemplates a stage in the proceedings before the Board prior to the coming into operation of section 18. Suppose no creditor is willing to come to a settlement. At the same time, the board feels that a fair offer has been made by the debtor. Then section 18 (1), it might be urged, must come into operation. Otherwise the result will be that if no creditor agrees to a settlement, the board will be functus officio. That is one point of view.

Mr. President.—How I understood the Bill was that if no settlement is arrived at under section 14, i. e. preliminary to the arriving of a settlement, 50 per cent of the creditors have not agreed, then section 17 comes into force. Section 18 comes into operation where no settlement has taken place under section 14. It is better to make it clear. "Where during the hearing of any application made under section 4 any creditor refuses to agree to an amicable settlement and no agreement is arrived at the Board shall grant a certificate etc". If the intention of the Law Member is what is intended to be conveyed by the Bill then section 18 should be amended. It may be in the following lines:— "Where during the hearing of any application under section 4 no amicable settlement is arrived at under sub-section (1) of section 14, etc". I do not want the lawyers to fight over this.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—It should apply even where there has been a settlement of such of the creditors who have wanted it.

Mr. President.—You are more liberal than the opposition.

Mr A. Sankara Menon *(Trippunithura).*—The principle underlying the Bill as I understood it was to make the debtors and creditors effect a conciliation. If creditors representing not less than 50 per cent of the unsecured debts agree to that conciliation the whole thing will work. That is clear from section 18 (1) itself. Even if among the unsecured creditors there is that agreement, the settlement will not be binding upon the other unsecured creditors. The remainder may or may not agree. If they do not agree to an amicable settlement then section 18 (1) operates; i. e. if any creditor refuses to agree to an amicable settlement. That settlement is under section 14. Otherwise there is no meaning. The object of the enactment is to make the debtors and creditors to come to an agreement and not to confer powers on the board. The object of the Bill is to make the debtors and creditors meet together and to prevail

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upon them to come to a settlement and after that settlement if the others do not agree the board is authorised to issue certificates and those certificates will have certain results.

Mr. President.—What the Hon'ble Deputy President says seems to be true. According to the interpretation of the Deputy President the whole scheme is based upon the fact that fifty per cent of the unsecured creditors agree. According to the Law Member even if no creditor agrees the board can force them by issuing a certificate.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I think the matter may be reconsidered again.

Mr. President.—The whole scheme comes into operation only when a debtor has made an application and fifty per cent of the unsecured creditors have agreed to a settlement. Then in the course of the hearing a settlement is made and any one of the other 50 per cent is free to refuse to agree to the settlement. Then the Board will say that it has been a reasonable offer and then they will issue a certificate. This certificate will be binding on others also.

Mr. K. Ayyappan *(Ezhuvas South).*—We want the Law Member's interpretation. But it must be in the Bill.

Mr. President.—The Legislature cannot leave the Bill in doubt. It should be beyond any doubt. After all the amendments are made in the Bill. I will have to reconsider what the final position of Government should be. When you reach a stage when there is difference of opinion in the interpretation of the sections, the legislature cannot leave the Bill there but you must clear the doubt. I do not want this Bill to be delayed at all. I would adjourn the House for that purpose just now. The Members of the Select Committee who discussed this matter may informally meet and come with an agreed amendment tomorrow. It is not a legal commitment to the Select Committee.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—I wish to clear one point, with regard to the interpretation of these two sections. I want to know how the difference in interpretation of sections 14 and 18 would affect the amendment now placed before the House?

മിസ്റ്റർ ടി. കെ. നായർ (*Pazhayannur*).—൫൦,൦൦൦ രൂപായുടെ പണയക്കടക്കാരന്റെ കാര്യം ഞാൻ ആദ്യം ഇവിടെ പറഞ്ഞു. അതു കൂടി കൊടുത്തു തീക്കുന്നതിനുള്ള ഭാരം ഡെറ കൺസിലിയേഷൻ ബോർഡിനെ ഏല്പിച്ചാൽ ഒരു സർട്ടിഫിക്കറു കിട്ടും എന്നുള്ള തര

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ത്തിലാണെങ്കിൽ ഗവമ്മെണ്ടിന്റെ ഈ അമെൻറുമെണ്ടിനെ സ്വീകരിക്കുവാൻ എനിക്കു വിരോധമില്ല. അതല്ലെങ്കിൽ ഇതു സ്വീകരിക്കുവാൻ നിവൃത്തിയില്ല.

മിസ്റ്റർ ടി. എസ്സ്. നാരായണയ്യർ (*Secretary to Government*).— ഗവമ്മെണ്ടിൽനിന്നും കൊണ്ടുവന്നിട്ടുള്ള ഈ അമെൻറുമെൻറിന്റെ ദോഷകരമായ ഭാഗം ഏതാണെന്നു വിവരിച്ചാൽകൊള്ളാം.

മിസ്റ്റർ ടി. കെ. നായർ (*Pazhayannur*).— പണയക്കാരനെയാകട്ടെ സെക്യൂഡ് ക്രെഡിറേഴ്സിനെയാകട്ടെ സമ്മതിപ്പിക്കേണ്ട യാതൊരാവശ്യവുമില്ല. അവർക്കു മല്യസ്ഥ ബോർഡിൽ വരേണ്ട ആവശ്യമില്ല. അങ്ങിനെയുള്ളവരെ ഒഴിച്ചു വെൺനിലക്കടക്കാരായ ആളുകൾക്കു അവരുടെ വസ്തു വിറ്റുപോകാത്തനിലയിൽ എന്തെങ്കിലും ഗതികിട്ടത്തക്കവിധത്തിൽ ബാക്കി വല്ലതുമുണ്ടെങ്കിൽ വീതിച്ചുകിട്ടിയാൽ കൊള്ളാമെന്ന് ആഗ്രഹമുണ്ടാകും. അവരുടെ സാമ്പത്തികവശം നോക്കിയാൽ വളരെ ദോഷകരമായിരിക്കും. അങ്ങനെയുള്ളവരാണു ബോർഡിന്റെ സഹായം ആവശ്യപ്പെട്ടനാളു്. ഈ വക സംഗതികൾ പ്രസിഡണ്ടവർകൾ നല്ലവണ്ണം ആലോചിക്കണമെന്നു എനിക്കപേക്ഷയുണ്ടു്. വെൺനിലക്കടക്കാരേ ഇല്ല, എല്ലാവരും പണയക്കടക്കാരേ ഉള്ളുവെങ്കിൽതന്നെയും അവർ നല്ല തറവാട്ടിൽ ജനിച്ചവരായിരിക്കും. അവർക്കും കോടതിയിൽ കയറാതെ കഴിച്ചാൽ കൊള്ളാമെന്നുള്ള മോഹമുണ്ടായിരിക്കും.

മിസ്റ്റർ എം. ശിവരാമമേനോൻ (*Ernakulam South*).— അവർക്കു വേറെ ഒരു നൂറു ഉറുപ്പിക കടമുണ്ടെങ്കിലോ?

മിസ്റ്റർ ടി. കെ. നായർ (*Pazhayannur*).— അതിനു വേണമെങ്കിൽ ഇതിൽ വേറെ ഒരു അമെൻറുമെണ്ടു ചേർക്കുവാൻ വിരോധമില്ല. അതിനു് അധികം ബുദ്ധിമുട്ടമില്ല. അൺസെക്യൂഡ് ക്രെഡിറേഴ്സിനാണു് ഇതിൽ പ്രധാനമായി കിട്ടേണ്ടതു്. സെക്യൂഡ് ക്രെഡിറേഴ്സിനു് യാതൊരു രക്ഷയും വേണ്ട. അവരുടെ പണം പോകാത്തവിധത്തിൽ മുതലുണ്ടെങ്കിൽ ഏതുപ്രകാരത്തിലും അവർക്കു കൊടുത്ത പണം മടക്കികിട്ടും. അവർക്കു പണയ വസ്തുവിൽ പ്രവേശിക്കാതെതന്നെ കോടതിയിൽ പോകാം. അവരുടെ അവകാശത്തെ യാതൊരുവിധത്തിലും തടയുന്നില്ല, പക്ഷെ പലിശമാത്രം ആ തിയ്യതി മുതൽ നൂ ശതമാനമേ കൊടുക്കുകയുള്ളൂ എന്നു വരുന്നുണ്ടു്.

Mr. A. V. Moothedan (*Chalakkudi*).—The Hon'ble Member cited the case of a man having no unsecured debts. The debtor can apply only when he is unable to pay his debts. That means the assets are less than 20,000 rupees.

Mr. T. K. Nayar (*Pazhayannur*).—I do not think this is an insolvency court.

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Mr. K. Achyuta Menon (*Diwan Peishkar*).—This is not a debt reduction scheme. But it is debt conciliation and in the word 'debt' secured and unsecured debts are included. The mere fact of the definition of the word debt shows that debt conciliation is between secured, unsecured creditors and the debtor. First there should be an application from the debtor and it should contain certain facts. Then the question arises who should agree. That is the subject matter of this amendment. Is it 50 per cent of the unsecured or 50 per cent of the total? The Deputy President maintains that it is better from the standpoint of the debtor that the agreement should be confined to an agreement between the unsecured creditors, because they have no security. But then, surely it will be a conciliation between unsecured creditors. The conciliation will be an unsecured debt conciliation. The scheme of the Madras Act is that the agreement should be between 50 per cent of the total number of debts and that is the amendment which the Government want. In that case it should be a debt conciliation of all the debts. The conciliation should not be between unsecured creditors alone. Suppose there are only unsecured debts worth Rs. 1,000 and secured debts worth one lakh. An agreement results if 500 rupees worth of creditors come to a conciliation and that conciliation will be binding upon the debtors to a certain extent. The secured creditors also are affected by this to a limited extent. The question therefore is can 500 rupees worth of unsecured creditors impose a conciliation upon the secured creditors. It will be a conciliation among the unsecured creditors. That is the reason for the amendment. Then with respect to section 18 (1) opinions might differ. But there is section 17 which says "If no settlement is arrived at under sub-section (1) of section 14 the board shall dismiss the application etc". If section 18 (1) does not presuppose an agreement then the imperativeness of section 17 vanishes and if the petition vanishes the board also vanishes.

Mr. President.—One other point with regard to this amendment is that it is based upon the Madras Act. This Act is intended for debt conciliation and if it is intended to be effective the board has to interfere wherever it is satisfied that the debtor is unable to pay all his debts. If it is 100 per cent secured debts it should not interfere. Therefore the coming in of a portion of the secured debtors is a sure indication that the man has not sufficient debts. That is the one aspect and the one idea underlying the principle of secured debtors. If the secured debtor comes in then assets are not worth the debts. In

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any case whether secured or unsecured debts should be brought together according to the amendment or whether it should stand as it is in clause 14 is a matter of principle. But the difficulty is with regard to section 18 (1) and that should be made clear. The Select Committee may informally meet and see whether we will be wiser tomorrow.

The House rose for the day at 4-55 p. m.

B. V. KRISHNANKUTTY MENON,

Secretary to the Council.

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